Nos. 11,943 and 11,944

IN THE

United States Court of Appeals

For the Ninth Circuit

JAMES M. AGNEW, JR., et al., *Appellants,* vs. AMERICAN PRESIDENT LINES, LTD. (a corporation), *Appellee.*	No. 11,943 (CONSOLIDATED CASES)
JOHN W. GRIFFIN, et al., *Appellants,* vs. AMERICAN PRESIDENT LINES, LTD. (a corporation), *Appellee.*	No. 11,944

APPELLANTS' REPLY BRIEF.

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(CONSOLIDATED CASES)

APPELLANTS' REPLY BRIEF.

1. THE SHIPPING ARTICLES WERE PLAIN, CERTAIN, AND UNAMBIGUOUS, AND CLEARLY ENTITLED THE LIBELANTS TO WAR BONUS, AT THE RATES STIPULATED THEREIN, FROM THE DATE OF THEIR CAPTURE BY THE JAPANESE TO THE DATE THEY CROSSED THE 180TH MERIDIAN ON THE REPATRIATION VOYAGE.

The law requires shipping articles to state "the amount of wages which each seaman is to receive". 46 U.S.C.A., sec. 565 (5). The law also provides that the shipping articles "shall be deemed to contain all

the conditions of contract with the crew as to their service, pay, voyage, and all other things". 46 U.S. C.A., sec. 676 (3).

Appellants' position here, as it was in the District Court, is that the law was obeyed; that the shipping articles constitute the contract of employment between appellants and appellee; that the riders prepared by appellee and forming part of the shipping articles are unambiguous; and that the sensible construction of the riders is that appellants are entitled to war bonus for time west of the 180th meridian whether on or off a ship.

Appellee's position here, as it was in the District Court, is that the law was disobeyed; that the shipping articles *and* the collective bargaining agreements between appellee and labor unions whereof appellants were members constitute the contract of employment between appellants and appellee; that the riders prepared by appellee and forming part of the shipping articles are ambiguous; and that under the riders, as interpreted by the collective bargaining agreements, appellants are entitled to war bonus only for time west of the 180th meridian on a ship.

The clash of these conflicting positions presents here, as it did in the District Court an issue of law. On the *de novo* hearing the cause is therefore free of any presumptions in favor of the decree of the District Court. (*Steeves v. American Mail Line,* 9 Cir., 154 F. 2d 24; *Alioto v. Imahashi,* 9 Cir., 115 F. 2d 324, 325.) Appellee's appraisal of "the manner in which

this Court should approach the findings of fact by the District Court" (Bf. Appellee 10-11), is therefore inappropriate.

That the shipping articles, and not the collective bargaining agreements, constituted the contract of employment of appellants, is clear under admiralty law. (*Steeves v. American Mail Line,* 9 Cir., 154 F. 2d 24; *The Setrain New Orleans,* 5 Cir., 127 F. 2d 878, 879; *Peninsula & Occidental S.S. Co. v. N.L.R.B.,* 5 Cir., 98 F. 2d 411, 415; *Rees v. United States,* 4 Cir., 95 F. 2d 785, 792; *McDonald v. United States,* 2 Cir., 292 F. 593, 594-595.)

That the shipping articles must be liberally construed in favor of the appellant seamen and effect given, if possible, to specific contractual language therein, is equally clear under admiralty law. (*Steeves v. American Mail Line,* 9 Cir., 154 F. 2d 24, 25; *The Thomas Tracy,* 2 Cir., 24 F. 2d 372, 373; *McDonald v. United States,* 2 Cir., 292 F. 593, 594-595; *The Florence Olson,* 9 Cir., 283 F. 11, 12; *The Catalonia,* D.C.Va., 236 F. 554, 555-556.)

At pages 12 to 15 of their opening brief, appellants undertook the demonstration that the riders forming part of the shipping articles are unambiguous, and that the natural and sensible construction thereof is that appellants are entitled to war bonus for time west of the 180th meridian whether on or off a ship.

The main contention of appellee is that the riders are ambiguous in that they contain agreements to pay war bonuses for time in "war zones" which are not

defined. The District Court agreed with this contention and held the riders patently ambiguous in such respect. (*Agnew v. American President Line,* 73 F. Supp. 944.) The contention is answered by a plain reading of the riders, for they reflect both intention to define the applicable "war zone" and an accomplishment of that intention. Each rider contains an express agreement on the part of appellee to pay war bonuses. Each rider contains an express agreement that war bonuses shall "apply from the crossing of the 180th meridian westbound until crossing the 180th meridian eastbound". Each rider contains a provision respecting the internment, destruction, or abandonment of the vessel as a result of war operations, immediately followed by specific contractual language that war bonuses "shall be paid while employees are in the war zones *defined herein*". (Emphasis added.) Fairly considered, the riders unmistakably define the applicable "war zone". That "war zone", obviously, is the area to which war bonuses shall apply. That area, obviously, is the area west of the 180th meridian.

Another contention by appellee is that the shipping articles *and* collective bargaining agreement constitute the contract of employment between appellants and appellee. Resorting to labor law, and repeatedly citing *J. I. Case Co. v. N. L. R. B.,* 321 U.S. 382, 64 S.Ct. 576, 88 L.Ed. 762, appellee insists that the collective bargaining agreements must dominate and dictate the interpretation to be accorded the shipping articles. That argument runs counter to the decision of this

court in the *Steeves* case. It is an argument apparently springing from a mistaken belief that when a seaman joins a labor union he ceases to be a ward of the admiralty. The Case decision lends no support to the belief, for it has no concern with shipping articles or admiralty law. And the decisions of the Supreme Court are uniformly reaffirming the proposition that "the ancient characterization of seamen as wards of the admiralty is even more accurate now than it was formerly". (*Cortes v. Baltimore Insular Line,* 287 U.S. 367, 377, 53 S.Ct. 173, 176, 77 L.Ed. 368; *Calmar S.S. Corp. v. Taylor,* 303 U.S. 525, 58 S.Ct. 651, 654, 82 L.Ed. 593; *Socony-Vacuum Co. v. Smith,* 305 U.S. 424, 59 S.Ct. 262, 85 L.Ed. 265; *Garrett v. Moore-McCormack Co.,* 317 U.S. 239, 63 S. Ct. 246, 252, 87 L.Ed. 239; *Mahnich v. Southern S.S. Co.,* 321 U.S. 96, 64 S.Ct. 455, 88 L.Ed. 561; *Seas Shipping Co. v. Sieracki,* 326 U.S. 700, 66 S.Ct. 872, 90 L.Ed. 413.)

In the field of labor law, moreover, the Case decision is authority for the rule that members of a labor union are third party beneficiaries under collective bargaining agreements made by the union. And in the field of labor law, the Case decision is also authority for the rule that collective bargaining agreements are not agreements of employment and that members of a labor union may freely enter into any individual agreement of employment which is not inconsistent with collective bargaining agreements or fair labor practices. Nowhere in its brief has the appellee pointed to anything in the collective bargaining agreements prohibiting appellants and appellee from agree-

ing in the shipping articles to payment of war bonus as claimed by appellants here and in the court below.

On turning to the collective bargaining agreements which the trial judge sanctioned as an aid to interpreting the riders when he erroneously held them patently ambiguous in failing to define "war zones", it will be found that they provide for payment of specified rates *of* "war bonuses", or "war risk bonuses", *to* "licensed officers", or "members of the union", or "seamen", or "unlicensed personnel", *for* "voyages" *into* geographically designated and described "areas", or "war risk areas", or "war risk zones". The applicable "war zone" as therein defined differed in no respect from the applicable "war zone" as defined in the riders.

Because the word "war zones" was used in conjunction with the word "voyages", in the collective bargaining agreements, the trial judge interpreted the riders as entitling appellants to war bonus only for time on a ship west of the 180th meridian. But the trial judge was not at all consistent in his aplication of this interpretation. Appellants were allowed war bonus for the 17 days they were west of the 180th meridian on the repatriation voyage after liberation. *Appellants were not allowed war bonus for the 3 months they were on the President Harrison west of the 180th meridian after capture and before the Japanese interned them on land west of the 180th meridian.*

The sensible construction of the riders, appellants repeat, is that they are entitled to war bonus for the

time they were in a war bonus area whether on or off a ship. That construction is in accord with the conclusion reached by the court in *Lewis v. American-Hawaiian S.S. Co.,* D.C.N.Y., 49 F. Supp. 127, where seamen were awarded war bonus for the time they were detained at Port Suez, Egypt after their ship had been bombed and destroyed by enemy action.

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2. THE COURT ERRED IN ADMITTING ORAL AND WRITTEN EVIDENCE TO CONTRADICT THE TERMS OF THE RIDERS ATTACHED TO THE SHIPPING ARTICLES.

Appellants agree that the rules of evidence are plastic in courts of admiralty. But they disagree with any contention that the rules of evidence are spastic is a court of admiralty or that the court is bound by state statutes or decisions. (*Minnesota S.S. Co. v. Lehigh Valley Transp. Co.,* 6 Cir., 129 F. 2d 22, 29: *New England Newsp. Pub. Co. v. United States,* D.C. Mass., 18 F. Supp. 674, 679.)

In the early case of *Bradley v. The Washington etc. Co.,* 38 U.S. 89, 97, 10 L.Ed. 72, 76, the Supreme Court announced the rule for admiralty courts that "extrinsic evidence is not admissible to explain a patent ambiguity". The District Court violated that rule if it be conceded that the riders were patently ambiguous. Of course appellants make no such concession. The ground of their complaint is that the court erred in admitting oral and written evidence to contradict the terms of riders which were not ambiguous. (*Steeves v. American Mail Line,* 9 Cir., 154 F. 2d 24, 25.)

3. THE DISTRICT COURT ERRED IN DENYING LIBELANTS ANY RECOVERY FOR MAINTENANCE.

The appellee argues that any right to maintenance necessarily ended when the voyage ended. That is not true as a general proposition, for the right to maintenance often survives and continues after the voyage is ended. (*Calmar S.S. Corporation v. Taylor,* 303 U.S. 525, 54 S.Ct. 651, 82 L.Ed. 593.)

"Maintenance" promised an employee as part of his compensation is unquestionably "wages". (*Pacific American Fisheries v. United States,* 9 Cir., 138 F. 2d 464, 465; *Harris v. Lambros,* App. D.C., 56 F. 2d 488; *First National Bank of Chicago v. Rogers, Brown & Co.,* D.C. Wash., 284 F. 921, 922; *The John L. Dimick,* D.C. Me., 13 Fed. Cas. 690, Case No. 7355; *Jones v. Atlantic Refin. Co.,* D.C. Pa., 55 F. Supp. 17, 22.) By the custom of the sea, "maintenance is an inherent part of the "wages" of every seaman. (*Cortes v. Baltimore Insular Line,* 287 U.S. 367, 371, 53 S.Ct. 173, 174, 77 L.Ed. 368; *The Bouker No. 2,* 2 Cir., 214 F. 831, 833; *The John L. Dimick,* D.C. Me., 13 Fed. Cas. 690, Case No. 7355.)

To withhold from these libelants for the time they were interned as prisoners of war payment in the reasonable value of maintenance of the same quantity and quality they were receiving and entitled to receive would be to deny them part of the basic wages promised by the shipping articles.

As the shipping articles preserved to the seamen the right to continued basic wages after the capture of the

ship, it logically follows that the right to payment of the reasonable value of maintenance, which was a part of the basic wages, likewise and continued after such capture of the ship.

CONCLUSION.

Appellants therefore again respectfully submit that the decree of the District Court should be reversed with directions to the court to award appellants (1) war bonus from the date of their internment to the date they crossed the 180th meridian eastbound on the repatriation voyage (2) maintenance for the period of their internment, and (3) costs.

Dated, San Francisco,
January 14, 1949

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Proctor for Appellants.